The BEACON SpotLight

A Study of Constitutional Issues by Topic

Issue 1: Republican Form of Government

"The Essence of Government is Power"

James Madison

Even a cursory look at the U.S. Constitution confirms James Madison's proposition that "The Essence of Government is power."

For example, **Article I, Section 1** declares:

> "All legislative *Powers* herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Article II, Section 1 likewise proclaims:

> "The executive *Power* shall be vested in a President of the United States of America..."

And **Article III, Section 1** details:

> "The judicial *Power* of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish..."

Government, then, is power — but toward what purpose?

As acknowledged by our Declaration, "Governments are instituted among Men" to "secure" our "unalienable Rights" which are "endowed" us "by our Creator."

While government may be all about power, its explicit purpose is to secure man's unalienable rights.

But left unchecked, government power ultimately proves antithetical to man's rights. As such, it should be of no surprise to find strong limitations on American government in our Constitution to protect against destroying its very purpose, so the end is not sacrificed to the means.

One of the most powerful constitutional protections is found in **Article IV, Section 4** of the U.S. Constitution which declares, in part:

> "The United States shall guarantee to every State in this Union a Republican Form of Government."

Republican Form of Government

A *Republican* Form of Government is representative government, where laws are enacted by legislative members operating within their powers as delegated by the very citizens whom they were elected to represent.

The Declaration of Independence lists many facts to prove the King of Great Britain was "unfit to be the ruler of a free people."

Foremost among the Declaration's list of abuses and usurpations was of the king pressing the American colonists to "relinquish the right of representation in the Legislature."

The Declaration held Representation in the Legislature to be a "right inestimable to them" and the king's call for relinquishment was "formidable to tyrants only."

Originally Entered into the Public Domain 2010; revised 2016

From the explicit constitutional guarantee of a Republican form of Government to the Declaration's insistence of this inestimable right of free people, one dare not overlook the fundamental importance of legislative representation.

In that even a quick glance at our founding documents produced a curtailing effect to the tenet that government is power, a further look is in order.

While Article IV, Section 4 guaranteed a Republican Form of Government for each of the States of the Union, the Constitution also sets up a Republican Form of Government for the Union of States.

Article I, **Section 1** details:

> "All legislative Powers herein granted shall be vested in a Congress of the United States."

The the legislative powers which were therein granted were *vested* in a Congress of the United States. This means that the legislative powers were *fixed* with members of Congress, that government officials in the executive or judicial branches could not exercise any legislative powers.

This principle is directly confirmed by **Article I, Section 8, Clause 18,** which states more fully:

> "The Congress shall have Power...To *make all Laws* which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

In Clause 18, one finds that only members of Congress shall have the power "to make all Laws" for carrying into execution the foregoin powers (those powers enumerated before Article I, Section 8, Clause 18).

This clause also details that only members of Congress shall have the power "to make all laws" for carrying into execution "all other Powers" which the Constitution vests in the "Government of the United States" and also which it vests even in any "Department" or individual "Officer."

Therefore, only members of Congress may make laws. Only members of Congress may make laws for carrying into execution any powers vested by the Constitution in Congress or anywhere vested in the U.S. Government.

With a proper understanding of early American history, it should not be surprising that the Constitution protects legislative representation so well.

Our nation's founding fathers well-understood the importance of legislative representation. They wrote of it often, including the 1774 Declaration of Rights (issued by the first Continental Congress), which states:

> "That the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council."

In 1774, the American colonists had not yet declared themselves free and independent States, but they were growing weary of the British government's claims of omnipotence.

The 1776 Declaration of Independence speaks a second time of legislative representation, when evidence was being submitted to a candid world to prove that the King of Great Britain was a tyrant who sought to establish "an absolute Tyranny over these States."

Providing further evidence of British tyranny, the Declaration of Independence detailed various "Acts of pretended Legislation," including the most onerous, the 1766 British Declaratory Act, which had the following effecgt:

> "For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all cases whatsoever."

This passage actually hones in on the fundamental, root cause of the Revolutionary War; the stated position of a stubborn mindset of the British government to absolutely refuse to acknowledge any rights of the colonists and a firm insistence on absolute British power over the American colonies.

In reality, the remainder of the Declaration of Independence merely lists a multitude of different symptoms of the same viewpoint (of the ability of Parliament to act in all cases whatsoever, being able to bind the North American colonies and colonists however Britain saw fit).

Remarkably, the last four words of this sub-paragraph repeat the same exact phrase found in Article I, Section 8, Clause 17 of our U.S. Constitution, "in all Cases whatsoever."

This is remarkable because this phrase is found within the Declaration where it was listing the many grievances against a tyrant who sought to establish an absolute tyranny over these States!

Thus, it should come somewhat as a surprise to find this particular phrase within our U.S. Constitution which otherwise guaranteed a Republican Form of Government in Article IV, Section 4 to every State of the Union (representative government of our elected peers who are empowered to act only within delegated powers).

An even more dramatic use of this same four-word phrase is found in one of the founding documents of one of the original 13 States.

South Carolina's 1776 State Constitution begins with the following words (italics added at the end):

"Whereas the British Parliament, claiming of late years a right to bind the North American colonies by law in all cases whatsoever…"

South Carolina's first Constitution actually shows just how far the claimed ability leads, stating more fully (italics added at the end):

"Whereas the British Parliament, claiming of late years a right to bind the North American colonies by law in all cases whatsoever…without the consent and against the will of the colonists..."

South Carolina's 1776 State Constitution clearly shows that the claimed ability of the British government was that they could actually "bind the North American colonies in all cases whatsoever" extending even to the point of nullifying American consent, and implementing governmental actions even against the colonists' will.

Both references in the Declaration of Independence and South Carolina's first Constitution to the claimed right and power of the British King and Parliament to be able to "bind the North American colonies in all cases whatsoever" actually point to the infamous Declaratory Act by British Parliament which was signed into law by King George III on March 18, 1766, which stated in pertinent words:

"That the said colonies and plantations in America have been, are, and of right ought to be, subordinate unto, and dependent upon the imperial crown and parliament of Great Britain; and that the King's majesty, by and with the advice and consent of…parliament…had, hath, and of right ought to have, full power and authority to make laws…of sufficient force and validity to bind the colonies and people of America, subjects of the crown of Great Britain, *in all cases whatsoever*."[1]

And there in the final four words of this passage one again sees the ominous phrase "in all cases whatsoever."

Here the British King and Parliament asserted their claimed right and absolute power "to make laws…of sufficient force and validity to bind the colonies and people of America…in all cases whatsoever."

This 1766 Declaratory Act was enacted on the same day the notorious 1765 Stamp Act was finally repealed by British Parliament under pressure exerted by powerful British merchants because of the successful implementation of American non-importation agreements (under which the colonists agreed with one another not to buy specified goods imported from Great Britain).

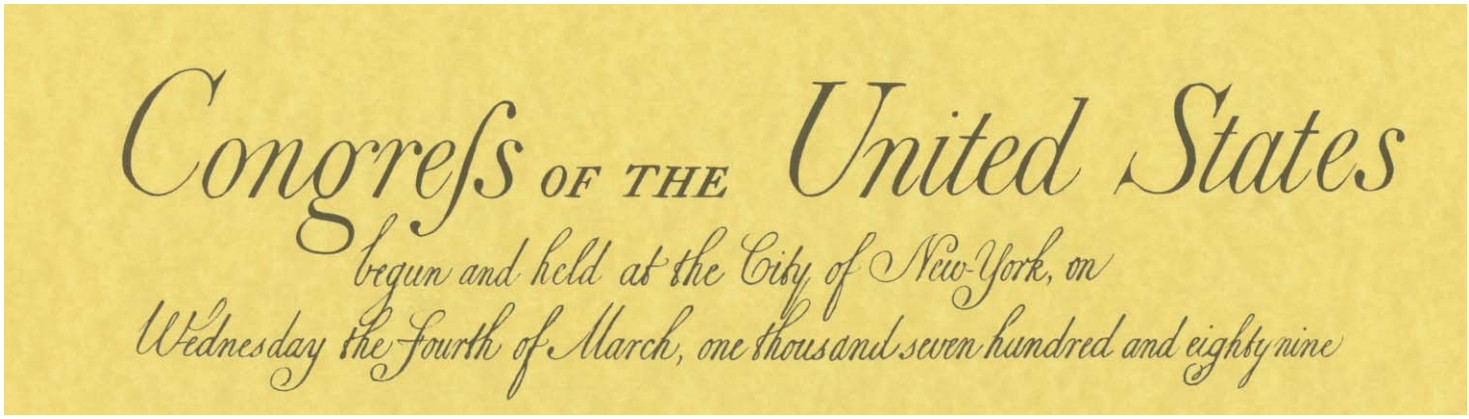
Thus, due to the extended perseverance of the colonists despite the corresponding hardship of doing without, the British merchants suffering lowered profits (or actual losses) eventually pressured their own representatives in British Parliament (for the American colonists had no representation in Parliament) to eventually drop the dreaded Stamp Act.

But the disgruntled Parliament would not drop the Stamp Act without directly stating their case in the Declaratory Act of their ultimate power and might over the colonies.

---

1. A.K.A.; The American Colonies Act. 6 George III, c. 12, *The Statutes at Large*, ed. Danby Pickering (London, 1767), XXVII, 19 - 20. Italics added.

Note the Declaratory Act's claim of (inherent) government "rights" (under the concept of the Divine Right of Kings), versus American governments which are delegated only 'power' (and [unalienable] rights belong only to people).



A simple compare and contrast between Articles I, II and III detailed earlier show a fundamental difference between Article I (legislative) and Articles II & III (executive and judicial, respectively).

As earlier covered, the Constitution unequivocally vested the *judicial* Power in the Courts and vested the *executive* Power in a President of the United States of America (each of these separate Powers were vested completely in their respective branches).

However, conspicuously absent is a similar comprehensive investment of the *legislative* Power with the Congress. To properly understand the limited nature of our federal government, one must comprehend this critical difference.

It is important to note that only a *few* legislative Powers, individually-enumerated and "herein granted", were vested with the Congress, rather than the whole legislative "Power".

Notably, Article I does NOT declare (in similar fashion to Articles II and III):

> "The legislative Power shall be vested in a Congress."

To repeat, ONLY the individually-enumerated legislative Powers "herein granted" were vested in Congress and NOT the whole legislative Power in any unified and complete sense (note the use of the plural form of "Powers" used in Article I, rather than "Power" as used in Articles II and III).

Though the word "All" in Article I appears inclusive, words of limitation ("herein granted") follow. The net effect is to *exclude* all other powers not therein granted.

Another way of stating "*All* legislative Powers *herein granted* shall be vested in a Congress" is "*Only* the legislative Powers herein granted shall be vested in a Congress".

The express acknowledgement that the enumerated powers were "*granted*" to Congress in the first place further and explicitly recognizes that there must be some other entity or individual, or a number of other entities or individuals, who grant(s) this power.

This principle is confirmed in the Constitution by **Article VII, Clause 1** which reads:

> "The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same."

The separate States, when they individually ratified the Constitution, ceded specified legislative powers over to the Congress of the United States of America.

Further, this express limitation of the grant of legislative powers to include only the powers specifically granted therein acknowledges that the legislative power which was *not* granted to Congress is located elsewhere (as later explicitly detailed in the 10th Amendment).

Article V covers the process of amending the Constitution. It reads, in part:

> "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case,

shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof."

Article V shows there are two methods for modifying the Constitution. In the first mechanism, Congress, with sufficient numbers, may (only) propose amendments. These proposed amendments are then sent to the State legislatures for debate and possible ratification.

The second mechanism allows for two-thirds of the State legislatures to call for a convention for proposing amendments. Any proposed amendments of such a constitutional convention would be debated and perhaps ratified by the individual State ratifying conventions.

As one can plainly see, only the States themselves have the authority to decide the ultimate powers provided or allowed the United States. Only the States ratified the Constitution and only the States may ratify Amendments. It is important to realize therefore that the several States are the *principal* to the contract which is the Constitution; the United States' government is but the *agent*. The United States' government is the State's agent for dealing with the issues detailed within the Constitution.

The individual States acting together created the United States and the individual States acting together determine the extent of powers allowed the United States.

Of course, that the States ultimately control the United States is backwards from common understanding — that the United States essentially dictate to the States. Without the States, there are no United States.

Since the States ratified the Constitution and ratify all amendments (additional grants or limitations on power), the States clearly have at least some of the residual legislative authority.

This principle is explicitly confirmed by the **Tenth Amendment**, which plainly declares:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

All legislative powers besides those listed in the Constitution remain with the States or within the people at large.

In discussing the powers granted to the Congress of the United States, one must thoroughly understand that phrase, as well as the proper relationship between the separate States and the United States.

Article I, Section 1 earlier discussed provides that "All legislative Powers herein granted shall be vested in a Congress of the United States".

At first glance, it is perhaps natural to think of Congress as but one of three entities of the federal


IN CONGRESS, JULY 4, 1776.

The unanimous Declaration of the thirteen united States of America,

government (along with the executive and judicial branches). If one misunderstands Congress as but an entity, however, one may easily misunderstand the very relationship between the States and the United States.

Literally and most properly, the Congress of the United States of America is NOT an "entity" but first and foremost a "meeting" or an "event".

This is perhaps easiest understood by looking at some of our country's organic documents for clarification. If one looks at the **Bill of Rights**, for example, one finds that it commences with the following words:

> "Congress of the United States, begun and held at the City of New-York, on Wednesday the Fourth of March, one thousand seven hundred and eighty nine."

To better understand "Congress", concentrate on the phrase "Congress…begun and *held*". If one

---

1. The 11th Amendment overturned the 1793 supreme Court's ruling on the jurisdictional limitations of Article III, Section 2, in the case of Chisholm v. Georgia, 2 U.S. 419 (1793). Thus, it is evident that the States hold the final authority on the ultimate meaning of the Constitution.

understands "Congress" to mean an *entity*, then the Bill of Rights does not make sense, for "Congress" as an entity cannot "begin and (be) held", for an "entity" cannot be "held".

An "event", in contrast, can "begin" and can also be "held". One can say "event…begun and held" and have it make sense. Variations on that thought also make sense: "meeting…begun and held"; "meeting of the United States, begun and held"; "Congress of the United States, begun and held" (when "Congress" means "meeting").

The Bill of Rights is a (joint) resolution of Congress, which is worded where the rubber meets the road as are all other legislative resolutions: "*Resolved*, by the Senate and House of Representatives of the United States of America, *in Congress assembled*…"

One must not overlook the meaning and importance of the phrase "in Congress assembled" within every resolution.

Every legislative act enacted by the members of Congress is worded and styled similarly: "*Be it Enacted*, by the Senate and House of Representatives of the United States of America, *in Congress assembled*…"

Every legislative act and every legislative resolution confirms that the Senators and Representatives of the several States *assemble* together in a Congress of all the States (*assemble* together in a meeting of the States, *meet* together in an *assembling of the States)* and pass laws within the authority ceded by every State as evidenced by the U.S. Constitution.

"Congress", "assembly", and "meeting" are inter-changeable words signifying a congregating together in legislative session of the significant parties which are the united States, the United States of America.

Article I, Section 4, Clause 2 of the Constitution confirms the literal meaning of Congress as a *meeting* of the States when it declares:

> "The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day."

"Such Meeting" refers directly back to "Congress". The Constitution here directly refers to "Congress" as a "Meeting", which is the correct view of the term.

Article I, Section 5, Clause 4 discusses a "Session of Congress" and the "sitting" of both Houses (in a Session or Meeting).

If Congress was but an *entity*, the singular personal pronoun "it" would be used when referring back to Congress within the same sentence. One should notice that the Constitution uses a third-person personal pronoun when referencing Congress, however. This helps show Congress not as an individual entity, but as legislative members assembled together in a meeting of the States.

Article I, Section 2, Clause 3, for example, includes the details that:

> "The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States…in such Manner as they shall by Law direct."

Using "they" in the clause as the pronoun referring back to Congress helps to show Congress as a group of legislative members of the States rather than an entity of its own accord.

In **Article I, Section 4, Clause 2**, the Constitution similarly directs that:

> "The Congress shall assemble…on the first Monday in December, unless they shall by Law appoint a different Day."

Article I, Section 7, Clause 2 indicates that if the President does not return a bill within ten Days, that the same shall be a law:

> "unless the Congress, by their Adjournment prevent its Return."

Article II, Section 2, Clause 2 provides that:

> "Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

---

2. The Constitution has a few scribner's errors, including here using "it's" with an apostrophe rather than simply "its" without the apostrophe.

An apostrophe is only properly used in this instance as a contraction for "it has" or "it is". "Its" without an apostrophe shows possession.

The Legislative Power

Article II, Section 3 includes the detail that the President shall:

> "give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient."

These examples help people understand Congress as a meeting of the States, rather than as an entity of its own power and volition. Thinking in terms of "(members of) Congress are…" rather than "Congress is…" helps reinforce such concept.

The Constitution does point once to a singular concept of Congress, in Article I, Section 1 when it states that all legislative Powers shall be "vested in a Congress of the United States of America". It is therefore not necessarily improper to use this singular concept of a Congress, provided one understands it literally as "a meeting of the United States of America".

Part of the difficulty in grasping the proper understanding of the relationship of Congress and the States stems from the pervasive misunderstanding of the phrase "the United States" itself.

This phrase "United States", as used in the Constitution, is also a plural term, as in "these United States *are*…" and is not a singular term, as in "the United States *is*…"

This concept, regarding the United States, is of great and fundamental importance, for it strikes at the very heart of government acting with apparent disregard for the Constitution. To understand how government appears to expand powers beyond the Constitution, it is imperative to first understand the concept of the United States as a plural term.

The United States as a plural concept is much easier to understand if one thinks "the united States" without the "u" in "United" capitalized (to hold it as an adjective modifying the noun, rather than as a proper noun). It was in such form that the Declaration of Independence was actually styled: "The unanimous Declaration of the thirteen united States of America".

Not only did the Declaration of Independence discuss the concept of *many* United States; so too did the **11th Amendment** to the Constitution:

> "The judicial Power of the United States shall not be construed to extend to any suit in Law or Equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

The 11th Amendment, that amendment which stands squarely at odds with the concept that the Constitution is whatever the majority of the supreme Court declare that it is[1], clearly discusses the concept

Executive and Judicial Officers

of a plurality of United States, when its refers to "*one* of the United States".

The idea that "these United States *are*..."; that the United States represent a plurality, is perhaps confusing, but is of vital importance. Every instance where the Constitution indicates word form for the phrase "the United States" indicates a plural term.

For instance, **Article I, Section 9, Clause 8** reads:

> "No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State."

The plural pronoun "them" in the Clause refers back to "the United States", to the States united under the Constitution. The States in their separate capacities were prevented from granting Titles of Nobility separately in Article I, Section 10, Clause 1, so Article I, Section 9, Clause 8 was not referring to the several States in their individual capacities.

Article III, Section 2, Clause 1 declares, in part:

> "The judicial Power shall extend to…the Laws of the United States, and Treaties made, or which shall be made, under their authority."

Since individual States are specifically prevented from entering treaties (again, by Article I, Section 10, Clause 1), this reference to "their" cannot possibly refer to the States in their separate capacities.

The **13th Amendment** shows the plural nature of the term even more clearly:

> "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Article III, Section 3, Clause 1 provides the simplest, most direct example of the United States as a plural term, of the States united together. It reads, in part:

> "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort."

Legislative Members

The United States is a plural term, as clearly signified by the use of the plural pronoun "them" and the possessive plural pronoun "their" in every instance within the Constitution where word form was indicated. The use of plural pronouns helps show the collective meaning of the United States to mean the States united together, rather than a singular entity of its own volition.

It should be noted that the Constitution does use the singular personal pronoun "it" when it refers back to a singular entity. In each of three instances in Article I, Section 5, Clauses 1-3 where the Constitution references "each House", for example, the Constitution uses the singular possessive personal pronoun "its" to refer to "its" members and "its" proceedings.

Also, in **Article I, Section 10, Clause 2**, the Constitution declares, in part, that:

> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws."[2]

Article V further declares that:

> "no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate."[2]

These examples show that personal pronouns were used properly; "it" was used in the possessive case of a singular entity (State and each House of Congress), and "they", "them" and "their" were used in the plural and possessive cases when referring to members of Congress and the States united together.

Today, there are 50 States united together under the Constitution to promote their common defense and general welfare. The States send their elected delegates, their U.S. Senators and Representatives, to meet together in a Congress of all the States and enact laws of mutual benefit under the powers delegated by the Constitution.

Viewed in this manner, the idea that the federal government can act in defiance to the States and dictate to them loses traction. Without the States, there are no United States.

When the States meet together in a Congress, they have their rule book which is the U.S. Constitution to abide by, which is a collection of the powers that the States individually ceded over to the States acting collectively together.

Looking at the Constitution, one will find that Article I, the Article covering the Legislative branch, takes up over half of all the words of the originally-ratified Constitution. In contrast, the Executive branch has fewer than one-fourth the words; while the Judicial branch has less than one-tenth.

That the framers spent so much time on the Legislative branch shows they clearly understood the power of Republican government to be centered there.

James Madison's comment in **The Federalist #51** sums up the principle well:

> "In republican government, the legislative authority necessarily predominates."

Article I, Section 7, Clause 2 of the Constitution details the process by which every legislative bill must pass "before it become a Law". It reads, in the pertinent portion "*Every Bill* which shall have passed the House and Representatives and the Senate, *shall, before it become a Law*, be presented to the President of the United States…" and goes through a number of scenarios, depending upon whether or not the President signs the bill.

Clause 2 continues with the process of enacting a bill overriding the President's veto, and it also covers the process followed if the President fails to act on the

bill. This latter process is important, for it clearly declares the status of such a bill when it doesn't get the proper attention it requires and Congress adjourns, stating "in which Case it shall not be a Law".

"In which Case it shall not be a Law" is a very powerful phrase and very powerful principle. "It shall not be a Law"; even a Bill properly passed (thus far) by both Houses of Congress fails to "be a Law" if it doesn't ultimately complete the proper process within proper time restraints. Obviously, the Constitution is very strict on what shall be a Law and what shall not be a Law.

The legislative power is the power to enact law. Given that the Constitution specifically vests Congress with enumerated legislative Powers and given that members of Congress have no ability to change the Constitution, then it necessarily follows that it is outside Congress' discretion and ability to delegate such legislative power to others.

The Constitution treats the Legislative branch of government fundamentally different from the Executive and Judicial branches. These branches of government are structurally different and are NOT interchangeable.

The Legislative branch of the United States is directly related to the State governments. Properly elected Representatives of the States meet together in a Congress of the States and pass laws within their authority. In contrast, the Executive and Judicial branches of the United States have no direct tie to the several States, but contain offices of the United States.

People who work in the Executive and Judicial branches are government officers holding government offices, and have no part in creating law (other than the President who is charged with approving or vetoing Legislative bills, recommending measures, etc.).

The Constitution acknowledges that persons in the Executive branch are *officers* who hold *offices*.

Article II, Section 1, Clause 1 provides that:

> "The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years..."

Article II, Section 1, Clause 5 details the qualifications for the "Office of President".

Article II, Section 1, Clause 6 provides the sequence for presidential succession, in case of "the Removal of the President from Office" or of his "Inability to discharge the Powers and Duties of the said Office".

Article II, Section 1, Clause 8 mandates the President take the following oath or affirmation *Before* he enter on the Execution of his Office:

> "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Article I, Section 3, Clause 5 acknowledges that the Vice-President will, in succession of the President, "exercise the Office of President of the United States".

Article II, Section 2, Clause 1 recognizes that executive workers are *officers* holding *offices:*

> "The President…may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices..."

Judges also hold offices. **Article III, Section 1** provides that "The Judges…shall hold their Offices during good Behavior". Section 1 also details that:

> "The Judges…shall…receive…a Compensation, which shall not be diminished during their Continuance in Office."

In stark opposition, the legislative branch has *Members* who hold legislative *Seats*. Legislative Members are not Officers. Legislative Seats are not Offices. The difference is fundamental; do not underestimate this important principle which properly enforces critical separation of powers.

Article I, Section 2, Clause 1 acknowledges that:

> "The House of Representatives shall be composed of Members..."

"The House...shall be composed of *Members*" —

---

3. Vol. 8, Annals of Congress, Senate, pg. 2245; see also, *The Beacon of Liberty*, Volume I, Issue 10). www.FoundationForLiberty.org/Beacon.htm.

4. Ibid, pg. 2251.

what further proof does one need to understand that the House of Representatives is composed of *Members* — not *Officers* — than these clear words of the Constitution?

Article I, Section 3, Clause 1 tells us that the Senate is composed of *Senators*; several other clauses inform us that Senators are only a subset of *Members*.

Article I, Section 5, Clause 1 declares that:

> "Each House shall be the Judge…of its own Members, and…may be authorized to compel the Attendance of absent Members..."

Article I, Section 5, Clause 2 repeats the principle that both Houses of Congress are composed of *Members*:

> "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member."

Article I, Section 5, Clause 3 states again that:

> "Each House shall keep a Journal of its Proceedings…and the Yeas and Nays of the Members…shall…be entered on the Journal."

Article II, Section 1, Clause 3 directs that should the electoral system fail to elect a President, then the choice shall go to the House of Representatives, a quorum of which shall consist of a "Member or Members from two thirds of the States."

Article VI, Clause 3 requires oaths or affirmations to support the Constitution before legislative members take their seats or executive or judicial officers enter on the execution of their offices. Clause 3 states, in part:

> "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution."

Article VI, Clause 3 accurately separates legislative *members* of both the States and the United States, and the executive and judicial *officers* (both of the States and the United States), to be bound by oath or affirmation to support the Constitution.

Article II, Section 1, Clause 2 likewise accurately separates Senators and Representatives from a "Person holding an Office of Trust or Profit under the United States" from being appointed an Elector.

Article I, Section 3, Clause 2 acknowledges that Senators hold legislative *seats* rather than *offices*, stating, in part, that:

> "The Seats of the Senators of the first Class shall be vacated at the Expiration of the second year..."

Finally, **Article I, Section 6, Clause 2** contains the following definitive prohibition, which proves beyond doubt that *Members* and *Officers* are polar opposites:

> "no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."

This powerful clause ensures a Republican Form of government. It precludes any person holding any office under the United States from being a member of either House during his continuance in office.

Since no officer of the United States can be a member of Congress, then the corollary holds true; no legislative member can concurrently hold any office under the United States. *No Member is thus ever an officer* (except House officers such as the Speaker of the House, etc.).

A Republican Form of Government is having duly-elected legislative members enact laws within their powers. One can see that the Constitution forbids any (executive or judicial) officer of the United States from holding any legislative authority. Their very essence of being an officer precludes them from holding any legislative power whatsoever, the power to enact law.

Executive officers execute (administer) laws enacted by Congress while judicial officers rule on issues or disagreements brought before them according to law.

Most every American today mistakenly believes that Congressmen are officers who hold offices. The idea that members of Congress could perhaps be considered officers in some sense of the word came up when Thomas Jefferson was Vice President of the United States under President John Adams. This mattered in the pertinent case as to whether a member of Congress could be impeached in accordance with **Article II, Section 4**, which states that:

> "The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

It is important to realize that **Article I, Section 5, Clause 2** provides:

> "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member."

Obviously, if a Senator could be impeached by the House of Representatives, then an entity besides the Senate could punish the Senate's Members for "disorderly Behaviour". Of importance in this case was whether or not each House determines its own order. In a broader sense, either the clauses in the Constitution have meaning, or they don't.

In the pertinent case, Jefferson, as Vice President of the United States, served as President of the Senate during the impeachment trial of Senator William Blount. Senator Blount was expelled by the Senate and was also impeached by the House of Representatives.

The question as to whether the House of Representatives had authority to impeach a Senator was brought up immediately and before impeachment.

It was decided in the House that the question as to whether or not they had power to impeach a Senator could only be "ripe" for consideration if there were sufficient votes to impeach Blount (if there were insufficient votes to impeach, then it wouldn't matter if they had the authority or not).

Thus, the House voted on whether or not Senator Blount deserved impeachment and the vote succeeded. Argument then went to the Senate to try the case, which immediately turned on whether the House had authority to impeach a Senator.

Senator Blount's only defense was that "a Senator is not an officer of the United States; and that no persons but the President, Vice President and civil officers are liable, by the Constitution, to impeachment".[3]

The House Manager (James Bayard) prosecuting the impeachment trial admitted his daunting challenge but nevertheless centered his creative argument thusly: "Now, it is clear that…a Senator is not an officer *under* the Government of the United States, but still he may be an officer *of* the United States"[4] and thus impeachable under Article II, Section 4.

The Senate, sitting under oath as a court of impeachment, ruled against this argument and against impeachment, holding that members of Congress are neither officers under the government of the United States nor officers of the United States.

This matter, as to whether Senators and Representatives are officers, is of great importance, for if legislative members could be thought of as officers in some sense of the word, then it would be less of a stretch to think that (executive) officers could act somewhat equally as legislative members and could therefore enact law or that held as law.

Recall that only enumerated legislative powers were granted to Congress. Realize also that Article I has a whole section (Section 9) dedicated to further express limitations on the legislative power. Remember that there are far fewer words in the Constitution covering the executive branch as compared with the legislative, so if the executive branch could somehow enact law even without an express grant of authority, then there would be few express limitations on it. With fewer limitations, it could be made more powerful than the legislative branch, under the false premise that the executive would have all authority except what is expressly forbidden him.

A Republican Form of Government is guaranteed to every State of the Union. A Republican Form of Government is representative government, a government where elected *legislative* representatives enact laws within their powers.

Americans interested in limited government must realize that the Congress must make ALL Laws under the Constitution. Anything held as law coming from the Executive branch (other than reprieves and pardons, etc.) must be held as suspect and critically analyzed to find out what is truly being authorized and what is improperly being held as assumption.

King George III sought to force the American colonists to "relinquish the right of Representation in the Legislature", a right they held "inestimable". The American colonists rebelled against such tyranny and held it as their right and their duty to throw off any such Government which limited true Representation and to provide new Guards for their future Security.

Today, Americans are being told they have to abide by mountains of administrative "law" "enacted" by Executive Agencies being run by appointed bureaucrats who were never elected to represent any

constituents.

That Executive Agencies seek to bypass legislative action completely and "enact" administrative "law" is not a Republican form of government. The Constitution declares that even bills passed by both Houses of Congress "shall not be a Law" if they fail to complete the full enactment process; clearly, that which bypasses Congress completely can never "be a Law" in these United States of America.

Neither in a Republican Form of Government is it legitimate to have a process in which a "rough outline" is enacted by Congress; to then have the administrative agencies fill in all the pertinent regulations by which every Citizen must live.

Today, we hear of administrative "czars" running entire economies without oversight, making unilateral decisions which will impact nationwide commerce for generations to come.

Are we truly living under the American equivalent of czarist Russia?

Do the United States grant such power to an appointed official?

Given the extensive regulation of business and the economy today by the "alphabet agencies" and independent establishments of the federal government (EPA, FTC, SEC, etc.), perhaps it is reasonable for Americans today to question the seemingly radical proposition that only Congress can enact laws which affect every American.

The Constitution thankfully provides even further clarification for those persons who doubt their own ability to understand its clear words.

Article I, Section 8, Clause 18 provides that:

> "The Congress shall have Power...To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Recall that Article II, Section 1 of the Constitution specifically invested the President of the United States with the *executive* power, the power to execute the laws enacted by Congress.

As such, maybe it would seem logical that the President and perhaps his principle officers in each of the executive Departments would have discretion to administer those laws solely under the President's direction and authority.

Clause 18, however, specifically directs otherwise. The Constitution vests the authority with Congress to make all Laws for carrying into execution not only the Article I, Section 8 powers of Congress earlier covered, but "all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof".

This clause shows that neither the President, nor any of the executive agencies (let alone the "Independent Establishments" of the government), are empowered to execute any laws, let alone as they see fit.

Clause 18 is brutally clear that Congress shall enact ALL Laws for "carrying into Execution" all powers vested in the Government of the United States.

Clause 18 then doesn't even allow the Executive Departments to make any Laws for the execution of powers for even one of its "Officer(s) thereof", let alone a whole department and certainly not anything that would reach private individuals.

Clause 18 speaks of *Laws* enacted by Congress. Given today's circumstances, can calling something a *regulation, code* or *order* bypass the entire constitutional protections the founders envisioned and be instituted by the President or his officers? Emphatically, NO!

Though the Executive and his Departments can institute minor measures (only) for themselves, the thought that these rules can reach to individuals is addressed by our entire form and system of government. It is thus up to us to learn how we have become so lost in our ways.

Public Domain (no copyright). 2010

Distributed by: The Foundation For Liberty www.FoundationForLiberty.org